

## 16B C.J.S. Constitutional Law § 1422

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### Constitutional Law

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### PART VI. Privileges and Immunities; Equal Protection

#### XVII. Subjects and Applications of Equal Protection Guarantee


#### E. Political Rights and Elections

#### 4. Qualification of Candidates

## § 1422. Candidates' residence as qualification

Topic Summary | References | Correlation Table

### West's Key Number Digest

West's Key Number Digest, Constitutional Law  3366, 3643 to 3646

**A durational residency requirement for candidates that has an impact on certain fundamental rights is subject to the strict scrutiny test to determine whether it contravenes equal protection but, if it does not have a major impact on fundamental rights, may be justified on a rational basis that candidates should reside among the citizens they represent.**

A durational residency requirement for candidates for public office that has an impact on the political process,<sup>1</sup> the right to travel,<sup>2</sup> or the right to exercise the franchise is subject to the strict scrutiny test.<sup>3</sup> However, where the requirement does not substantially or severely impede fundamental, constitutional rights of potential candidates, voters, or anyone else, strict scrutiny will not be applied and instead would be upheld if it bore a rational relationship to legitimate governmental objective.<sup>4</sup> A 30-day prefiling residence requirement for local office is reasonably necessary and convenient to accommodate the needs of election officials in verifying the residence of candidates, and if this is the case, any durational period requirement for local office in excess of that violates equal protection.<sup>5</sup>

While a requirement that a candidate be a registered voter for a reasonable period has been upheld,<sup>6</sup> it is a violation of equal protection to require that a candidate who was registered to vote in the county for the requisite time also reside in the same precinct for that period.<sup>7</sup>

A minimum residence requirement for candidates may be justified on the basis that it is rational to require that candidates reside among the citizens who they seek to represent<sup>8</sup> if this does not significantly affect a potential candidate's freedom to travel or to associate with others.<sup>9</sup> A statute requiring that a candidate for a public service commission reside in a district for 12 months prior to the election was rationally related to a state's legitimate interests in fostering informed voters and promoting knowledgeable and responsive candidates with ties to the community and thus did not deny equal protection.<sup>10</sup>

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## Footnotes

- 1 Cal.—Johnson v. Hamilton, 15 Cal. 3d 461, 125 Cal. Rptr. 129, 541 P.2d 881 (1975).  
**Limitation of the candidate pool**  
 The New Jersey Constitution's one-year district residency requirement for candidates for state senate and state assembly was subject to strict scrutiny, rather than rational basis, review on a claim that it violated equal protection, where the requirement that a candidate have resided for one year in the legislative district that he or she sought to represent substantially limited the candidate pool during reapportionment years, and, in turn, the fundamental right to vote for the candidate of one's choice.  
 U.S.—Robertson v. Bartels, 890 F. Supp. 2d 519 (D.N.J. 2012).
- 2 Cal.—Johnson v. Hamilton, 15 Cal. 3d 461, 125 Cal. Rptr. 129, 541 P.2d 881 (1975).
- 3 Cal.—Johnson v. Hamilton, 15 Cal. 3d 461, 125 Cal. Rptr. 129, 541 P.2d 881 (1975).  
 Md.—Board of Sup'rs of Elections of Prince George's County v. Goodsell, 284 Md. 279, 396 A.2d 1033 (1979).  
 N.J.—In re Contest of November 8, 2011 General Election of Office of New Jersey General Assembly, 210 N.J. 29, 40 A.3d 684 (2012).
- 4 U.S.—Lewis v. Guadagno, 837 F. Supp. 2d 404 (D.N.J. 2011), judgment aff'd, 445 Fed. Appx. 599 (3d Cir. 2011).
- 5 Cal.—Johnson v. Hamilton, 15 Cal. 3d 461, 125 Cal. Rptr. 129, 541 P.2d 881 (1975).
- 6 § 1421.
- 7 Okla.—Mathews v. State Election Bd. of Oklahoma, 1978 OK 113, 582 P.2d 1318 (Okla. 1978).
- 8 Ohio—State ex rel. Markulin v. Ashtabula Cty. Bd. of Elections, 65 Ohio St. 3d 180, 1992-Ohio-84, 602 N.E.2d 626 (1992).
- 9 Ohio—State ex rel. Brown v. Summit County Bd. of Elections, 46 Ohio St. 3d 166, 545 N.E.2d 1256 (1989).
- 10 Ga.—Cox v. Barber, 275 Ga. 415, 568 S.E.2d 478 (2002).  
**Familiarity between candidates and constituents**  
 State constitution's one-year durational residency requirement for membership in the General Assembly served significant and legitimate state interests and, thus, did not facially violate equal protection; the durational residency requirement ensured that voters had time to develop a familiarity with the candidate, ensured that the candidate could become familiar with the constituency and the issues facing the people to be represented, and operated as a curb on carpetbagging.  
 N.J.—In re Contest of November 8, 2011 General Election of Office of New Jersey General Assembly, 210 N.J. 29, 40 A.3d 684 (2012).

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